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INDIANA MUNICIPALITIES AND THE STATE GOVERNMENT*

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To make a statement of the true relation between the municipality and the States as it is applied today, that everybody would accept as correct, would be an impossibility. To state one that would give general satisfaction today with the purpose that it would answer tomorrow, would be expecting entirely too much. In matters of this kind, it is safe to say that we are living, possibly more than at any other time in history, in the midst of radical change in all things, including the application of law. The beginning of the municipality is lost in antiquity.

There were municipalities, at least in a certain sense, in the earliest times. Great cities were established and these could only be maintained by a system of municipal government, crude and incomplete at first, but certainly by no means contemptible.

In the early Hellenic civilization, the city was the state, governed in general by the whole body of free citizens who met and discussed all questions of politics. The Roman Republic took its origin from the City of Rome and was but a development and extension of that city, and the Empire erected on its foundation was remarkable for the power, influence and wealth of the municipalities.

The "Municipium" was a town out of Rome, particularly in Italy, which possessed the right of Roman citizenship but was governed by its own laws and officers. The germ of the muni-

* Address by Mr. Wolf delivered before the Indiana State Bar Association 1928. See p. 270 for biographical note.

cipal corporation in England is to be traced to the "farmer commonwealth" of the early Teutons. Many English cities were deprived of their charter by Jeffries, under forms of law and by surrender made to the Royal Tyranny. This, however, was thrown aside and the city re-infranchised after the Revolution of 1688 by Act of Parliament.

When the earliest settlers came to this country from England, they were collected together in small bodies and the government was local self-government, and separate and distinct from their sovereign across the sea. So that this country grew up out of municipalities.

In the State of Indiana there were first local communities which were governing themselves under their own rules. True, Indiana was a part of the colony and State of Virginia, but the government of Virginia did not in those early days reach out to the present territory of Indiana in any effective manner so that what are now municipalities were here.

In this state and in others, charters were formerly granted to municipal corporations, especially cities and towns, but since 1851 cities and towns have been organized under general statutes.

A municipal corporation has been defined by decisions in Indiana, as well as other states, in these words:

> "A municipal corporation is a legal entity of institution, a body corporate and politic, created by the legislature. It is a creature of the State."
>
> "Municipality in this State, as well as other states, has developed into a highly complicated legal institution, performing a variety of functions, some governmental and some municipal."

A municipal corporation being recognized as an appropriate instrumentality for the administration of general laws of the state within its boundaries and empowered for that purpose, thereby becomes an agent of the state for local administration and enforcement of its sovereign powers. The municipality enforces those general laws of the state by local police selected by the municipality.

Originally the municipal aspect of a municipality was allowing the population thereof to preserve and maintain their own traditions, customs, habits of life, by ordinances of their own making and officers of their own choice. The municipality in this matter was an organization for local self-government, subordinate to the state, but in recent times the municipality has

undertaken to supply inhabitants who will pay therefor, water and other facilities of life. It is engaging in business when it does this upon municipal capital and for municipal purposes. It has also controlled public utilities in the various cities. In the past, cities in this state have controlled telephone companies, water companies, heating companies, lighting companies. Until recent years, those things have been considered the business of the municipality.

In the case of the *City of Lafayette v. Cox*,[1] in which the charter of the city was involved, the Supreme Court uses this language:

"With us cities are created and endowed with powers by the legislature under what are called charters and it is an established rule of law, one so well known that it would be superfluous to cite authorities as evidence of it, that in their action these cities must be confined within the limit that a strict construction of the grants of powers in their charter will assign to them."

Municipalities are defined as creatures of the sovereign, having only such powers as are granted by the sovereign.

One of the judges concurred in the conclusion, but dissented from the reasoning of the court.

This judge wrote the opinion in the case of *Smith v. City of Madison*,[2] where the powers of a city charter was again involved, and used these words:

"Premising that the powers conferred on the city by its charter are specific and limited and should receive a strict construction, it is yet not perceived upon what principle, the construction given to the charter should be so strict and literal as to defeat the whole machinery of municipal regulations. The strictness then, to be observed in giving construction to municipal charters, should be such as to carry into effect every power clearly intended to be conferred on the municipality, and every power necessarily implied in order to complete exercise of the powers granted."

The principles set out in these cases have been followed at all times since. The trend of authorities has been that before a municipality is entitled to exercise a power it must be able to point to the statute passed by the legislature, which in plain terms gives the right to exercise the power; that if there is any doubt as to the right, the doubt must be construed against the municipality.

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[1] 5 Ind. 38.
[2] 7 Ind. 80.

Since the law seems to be as just stated, that a municipality is a creature of the state, and has no powers, except such as are granted by the state by statute passed by the legislature, the question arises, How far can the state go in taking away the powers that have been granted by the state? If there are no powers existing except such as are granted by the state, can the state take away all powers, or if not, how far can it go?

In the case of *Sloan v. State*,[3] decided in 1847, this language is used:

"Public or municipal corporations are established for the local government of towns or particular districts. The special powers conferred upon them are not vested rights as against the state, but being wholly political, exist only during the will of the general legislature; otherwise there would be numberless governments existing within the state, and forming a part of it but independent of the control of the sovereign powers. Such powers may at any time be repealed or abrogated by the legislature either by a general law operating on the whole state or by special act altering the powers of the corporation."

March 8, 1889, the General Assembly passed two bills that caused great resistance to the application of the theories just set out, as steps in the direction of the destruction of local self-government.

One of these laws, passed over the Governor's veto, was an act providing for a Board of Metropolitan Police and Fire Department in all the cities of this state with 29,000 or more inhabitants, according to the United States census of 1880.[4] The act provided that the members of the first boards were to be elected by the General Assembly on the taking effect of the act. It was provided that this Board of Metropolitan Police and Fire Department should take the place of all Fire Departments and Boards of Police existing in the cities coming under this act.

On the 8th of March, 1889, the legislature passed over the Governor's veto an act establishing a Board of Works and Affairs in all cities of 50,000 inhabitants or more.[5] It was provided that the General Assembly should designate the members of this board who should hold for the term of the first two years and the members who should hold for the term of four years.

In the City of Evansville and the City of Indianapolis these two statutes were immediately attacked. Suits brought upon

[3] 8 Blackford 361, 364.
[4] Acts 1889 p. 222.
[5] Acts 1889 p. 247.

these laws quickly found their way to the Supreme Court. The opinions of that court were handed down in each of these cases on April 24, 1889. Almost a hundred pages of Volume 118 of the Indiana Reports is taken up with the opinions in these cases, and all show great study upon the part of the court, great research of laws, decisions of other courts and the history of the relation of municipalities to the sovereignty under which they existed.

The first of these cases is *State ex rel Jameson et al vs. Denny, Mayor of Indianapolis.*[6] The appellants in this case were elected by the General Assembly of the State of Indiana as members of the Board of Public Works and Affairs of the City of Indianapolis, prepared the bonds therein required, and tendered the same to the appellee, as Mayor of said city, for his approval. Appellee declined to approve said bonds and the action was brought in the Superior Court of Marion County to compel him by mandate to discharge that duty. The trial court refused to mandate. As already stated, the act thus attacked provided that the first members of the Board should be elected by the General Assembly. This was one of the questions raised in this suit.

The statute also provided that the Board of Public Works and Affairs is to have the exclusive power and control over the construction, supervision, etc., of cleaning, repairing, grading and improving of all streets, alleys, etc., avenues, lanes, bridges, drains, culverts, sidewalks and curbing, and the lighting of such places as may be deemed necessary in such cities and to fix and establish the grades of all streets and alleys, etc., avenues, and thoroughfares; to order the improvements of the streets, and alleys or thoroughfares, where majority of the property owners affected do not remonstrate. It was to have the exclusive power to make all improvements and expenditures. It was entitled to the possession of all property belonging to the city used for the purposes named and it was made the duty of the common council to provide for the payment out of the city treasury of all the expenses incurred by the Board of Public Works and Affairs. The act abolished all existing Boards of Public Improvement and the office of Street Commissioner. It is plain to be seen that this law took away the power of the municipality organized under the statute of the State.

The court states the effect of the law in this language:

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[6] 118 Ind. 382.

"In this case the legislature had undertaken to place in the hands of three men the exclusive control of all the streets, alleys, lanes, thoroughfares, bridges, and culverts in the City of Indianapolis, without the consent of those to be affected thereby, with full power to improve, alter and change the same in any manner they may choose, with the exclusive power to employ all the assistants they may desire, including legal counsel, and fix their salaries and compensation in such sum as they in their unrestrained judgment may think proper without any accountability to anyone."

This law was attacked upon two propositions:

1. That under our constitution the General Assembly had no power to elect or appoint the appellant and that so much of the act as attempted to confer on it such power is in conflict with the constitution and is, therefore, void.

Upon this question the court, after an exhaustive study of the matter, and setting forth the meaning of the Constitution of 1851, declared that the appointment by the General Assembly was void and in conflict with our constitution.

2. The court states the other question involved, thus:

"It is to be observed that the act takes away from cities having a population of 50,000 inhabitants or more, all control over the streets, alleys, light and water supplies and transfers it to a board in the selection of which the people of the city have practically no voice. It is plain that inasmuch as it practically deprives the people of the power of local self-government, it is in conflict with our organic law and is, therefore, void."

It was maintained by Judge Coffey, who wrote the opinion, that the principles of local self-government constitute a prominent feature in both the Federal and State government. That this is a fact is not to be denied. That the constitution must be considered in the light of the local and state government existing at the time of its adoption. Considered in any other light, many expressions found therein would be without meaning. The right of local self-government existed before the creation of any of our constitutions, national and state, and all of them must be deemed to have been framed in reference to it, whether expressly recognized in them or not. Indeed it is recognized as the chief bulwark, for the protection of the liberties of the people against great centralization of powers, either in executive or legislative departments of the state. It is admitted that the assembly may pass laws regulating the government of towns and cities, taking from them powers which had previously been granted, or adding to that which had been previously given, but the Judge says, "We do not think it can take away from the people of the town or city, rights which they

possessed as citizens of the state before their incorporation. The object of granting to the people of a city municipal powers is to give them additional rights, and powers to better enable them to govern themselves, and not to take away any rights they possess before such grant was made."

The judge does concede that it may be true as to such matters in which the state has a peculiar interest. It may, by proper legislative action, take control of such interest, but as to such matters as are purely local, and concern only the people of that community, they have the right to control them, subject only to general laws of the state, which affect all the people of the state alike. The state has no special interest more than it has in the health and prosperity of people generally, in the construction of sewers, supply of gas, water, fire protection and many other matters.

In the separate opinion of Judge Elliott, he uses this language:

> "The question in this case so far as it directly involves the appointing power of the General Assembly is, it seems to me, this: Has that body the power to appoint local officers, county, township, town or city? Those who affirm that it has that power necessarily affirm that it may take it from the people of the locality. This I deny."

He holds that all power is inherent in the people, this being the first declaration of the bill of right, the constitution of 1851. This is an expression of a principle that is older than the constitution and exists by its own innate vitality and vigor.

It needed no constitutional declaration to invest the people with power, but it does require a constitutional provision to take it from them in whole or in part. This inherent power includes the right of the people to choose their own officers. This opinion shows profound study of the laws of ancient nations and follows the history down to the time the opinion was written.

The opinion of Judge Elliott is confined to the first propostion, the appointment of officers for a municipality, or to do the work of a municipality, by the General Assembly.

The dissenting opinion is written in this case by Judge Mitchell. First, he takes the position that the court in that case had no power to hold the statute in controversy void, for the reason that it was unconstitutional, because there was no letter of the constitution which gave any such powers to the court. This had been and is now generally conceded to be the true statement of the power of the court. No difference how good a law, or how

bad, unless the letter of the constitution is clearly and plainly violated in some express statement, the court has no right or power to declare the act void; and as the constitution has erected no standard, by which to determine what constitutes local self-government or what are natural and inherent rights, as those terms applied to municipal government, the court cannot step in and supply what the constitution has failed to say. Judge Mitchell uses this language:

"Disputes upon theories of local self-government began with the organization of civil society and they will doubtless continue until human government ends. . . . Municipal corporations are bodies, politic and corporate, created by the legislature as governmental agencies of the state and they can only exercise such powers as they derive from the source of their creation. Such powers as they exercise are at all times subject to the legislative control and in the absence of constitutional prohibition, their powers may be enlarged or diminished, or withdrawn all together and their property be devoted to use as the legislature may determine."

It is an education to read the opinions in this case.

The next case is *City of Evansville v. State,* ex rel, Blend.[7]

The opinion is written by Judge Berkshire. Judge Mitchell again dissents but writes no new opinion, standing upon the opinion he had written in the case heretofore referred to. Judge Elliott writes a separate opinion in one sentence: "I fully concur in the general conclusions announced in the principal opinion, but do not fully concur in all the reasonings."

In the Evansville case, the relators were duly elected by the General Assembly, qualified as members of the Metropolitan Police and Fire Board for the City of Evansville with power and control over the Police and Fire Department of said city and full control over the property and records of said city belonging to said departments. The Mayor and members of the Common Council and the Superintendent of the Police Department, refused to turn over the property and records to the Metropolitan Police and Fire Department that had been duly elected by the General Assembly. The following case of *State ex rel Holt v. Denny,* Mayor of Indianapolis,[8] was based upon the same statute with the same questions arising. In the Evansville case, new authorities are cited and the opinion shows great research by the court. In this case the Supreme Court again takes the position that the people of the state generally are not interested in any of the matters to which the said act of the legislature relates

[7] 118 Ind. 426.

[8] 118 Ind. 449.

but the citizens of Evansville and Indianapolis, the two cities to which the act applies, are alone interested. It, therefore, becomes a question whether or not the legislature may take from the people of these two cities the right of local self-government, the right to manage and control their own purely local affairs in their own way, and place the management of all such local affairs under state control. "We do not believe that the legislature has any such powers."

The court then takes the position that the people of Indiana originally possessed all governmental powers and it will not be questioned that they still possessed all power that has not been delegated to some agent of the people. This case as well as the other two, stands upon the proposition that *under our constitution the people have still all the power they ever had and the legislature has only that which the constitution specifically gives to it.* This is contrary, however, to what we have generally understood to be the position of the government in the state. It has always been conceded to be the proper doctrine as to the Unied States but not as to the individual states.

The court says: "The statute in question is a very remarkable statute, to say the least of it, and if it becomes necessary it would be a question for serious consideration whether it ought not to be held unconstitutional upon the ground that it is contrary to natural justice and equity," and cites a number of cases. A case in Greenleaf[9] is cited which holds that some things affecting municipal corporations are beyond the scope of legitimate legislation by the General Assembly; a doctrine entirely at variance with the idea of the Constitutional Supremacy of the General Assembly's law-making power over such corporations.

In the third case[10] the principal opinion is written by Judge Olds. It also shows great study, search of authorities and that the Judge writing the opinion knew the history of these matters well. The Judge, in writing the opinion in this cause, recognized the difference as to the right to control a Fire Department and Police Department. The Fire Department is purely a local affair; the Police Department is a state affair but he holds that in this case the two in the one statute were so commingled that they could not be separated and the whole statute was invalid and void for that reason. These cases were all presented and argued by some of the greatest lawyers that Indiana has known.

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9 *Bowdoinham v. Richmond,* 6 Greenl. 112.

10 *The State ex rel. Holt et al. v. Denny etc., supra* p. 238 note 8.

While the same judges were upon the bench the question of right of the legislature to make the textbooks for the public schools, uniform throughout the State, and other matters connected therewith came up and were decided in the case of *State ex rel Clark v. Monroe, School Dist.*[11] The same question of local self-government came up. In this case, however, the statute was upheld on theory that a uniform school system throughout the state could not exist unless the state itself had control, but the dissenting opinion was again based upon the question of local self government.

The important question decided in the three cases in 118 Ind., which we have reviewed, again came before the Supreme Court in the case of *State ex rel Geake, et al, v. Fox,* comptroller, of the City of Fort Wayne.[12] This was a suit brought in Fort Wayne by Commissioners of a Board of Public Safety for this city against the comptroller to compel him to approve the filing of their bond which was given under the authority of a state statute approved March 7, 1901.[13] That law provided that the government of all cities having more than 35,000 and less than 49,000 population shall be accomplished by six executive departments; financial, law, public works, public safety, assessments and collections and public health and charity. No other executive or administrative department shall be established in such city. The heads of said departments, except the Department of Public Safety and one other shall be appointed by the Mayor. The Department of Public Safety should have its Board of Three Commissioners appointed by the Governor and to serve for four years. They should have the care and management, supervision and exclusive control of all matters relating to the fire and police board, fire alarm, telegraph, erection of fire escapes, inspection of buildings, boilers, market places and food sold and the right to purchase at the expense of the city, all necessary supplies and apparatus. This case was also conducted by some of the most prominent and most efficient lawyers of the State of Indiana. The relators asked the court to modify or overrule the cases in 118 Ind. Appellee contended that those cases were correct at least as to the maintenance and control of the Fire Department. The opinion in this case was written by Judge Hadley. He uses this language in the beginning:

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[11] 122 Ind. 463.

[12] 158 Ind. 126.

[13] Acts Indiana 1901, p. 132.

"We approach a consideration of the subject with that hesitation which is incident to a knowledge that the question has been heretofore discussed pro and con, by judges of this and other courts of distinguished ability, and that the principal reasons in support of and against the rule as adopted in this state have been forcibly and logically presented. Only the great importance of the subject and the earnest insistence of appellant's able counsel that this court has been resting in error for twelve years, induces us again to enter upon its general review."

The court states five preliminary propositions deemed as settled in this state.

1. When a party assails an Act of the General Assembly as being prohibited by the constitution, the burden is upon the assailant to establish that fact beyond reasonable doubt.

2. Aside from the restrictions of the State and Federal Constitution and the laws and treaties passed and made pursuant thereto, the General Assembly is unlimited in the exercise of legislative powers.[14]

3. The question as to whether a law is politic or expedient or necessary, or wise or unwise, belongs exclusively to the General Assembly and not to the courts.

4. The legislature has power to provide that the Police force of municipal corporations shall be controlled by a board appointed by the Governor.

5. As to the point that if a part of the statute is valid and a part invalid, the court will uphold the valid part if it can do so.

The court then states the question before it: "Has the legislature constitutional authority to place the management of the Fire Department of municipal corporations under the control of boards appointed by the government?"

Again the judge goes into history, the evil effects of destroying local government and gives a very fine analysis of the constitution upon the question involved. The court shows conclusively that the constitution of 1851 differed from the constitution of 1816 in that it gave the people more power to name and elect their own officers than the earlier constitution. It brought to the people the right to control, more than the old constitution.

However, the court states that municipalities have two functions.

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[14] This proposition is clearly in conflict with the position of the majority of the court in the three cases cited in 118 Ind. There the court held that the rights and powers of municipalities and the general understanding of local government existing at the time of the adoption of the constitution should be read into the constitution, although not mentioned there, and should be considered along with the constitution itself.

1. As state governmental agencies, to assist the state, (in their localities) in the administration and execution of such laws as pertain to the people of the state at large.

2. For the promotion of certain exclusive local interests which are peculiar to a concentrated population and in which the state excepting conferring the power and regulating its exercise, has no more right of interference than it has with the private affairs of its several inhabitants.

These two things are stated as the purpose of the constitution. It was held that the chief value of property which then belonged to the City of Fort Wayne is in its unrestricted right of possession and control and when the state sent its agents into the City of Fort Wayne and ousted the city from the possession of its property and took exclusive control, the court asks the question: "What is the act but the taking of property without compensation?"

Another view: The City of Fort Wayne as a municipal corporation had no separate representation in the law-making body of the state, but when the state by its commissioners assumed exclusive control of the City Fire Department without advice or consent of the city, appointed officers to create and fill new places, new officers, etc., and required the council to levy taxes upon the city's inhabitants to meet such cost and expenses, what is this but taxation without representation?"

The court held in this case that the law was invalid not only as to the Fire Department, but also to the Police Department, for the reason that the act gives the same commissioners that control the Police Department also the control of the Fire Department, on one salary and one bond for both parts.

These great opinions given in the cases referred to have built up a great barrier for the protection of local self-government and have recognized and stood by one of the greatest safeguards of our liberty, but they have not settled all questions involved so that they will fit all times and all changes to come.

In Dillon on *Municipalities* the cases are referred to in these words:

> "The Supreme Court of Indiana has sustained the right of local self-government in that state in opinions of vigor and learning which hold to be unconstitutional two acts of the legislature which deprive certain classes of municipalities of the usual right of municipal control and local regulations."

Time, however, changes many things; the law and application of law, as well as manner of living, business of all kinds, the

relation of communities to each other. These cases have been frequently referred to by our courts, and have generally been approved because of their outstanding clarity and upholding of local self-government. However, the Supreme Court has gradually distinguished them so that they are no longer applicable to many of the things, that municipalities controlled when these cases were decided.

Many things that were formerly controlled by municipalities are now controlled by the state through such instrumentalities as the Public Service Commission and others. The memory of most of us reaches back to the time when each and every municipality in the state, that had telephone connection, especially a telephone plant, had control thereof, made contracts with the company owning the telephone plant, fixed the rate to be charged, controlled the use of the streets for that purpose, and in fact did everything that is now done by a different authority. All of this has disappeared and the law which put all this matter throughout the state under the control of the Public Service Commission has been upheld by the Supreme Court. Local self-government no longer controls this matter unless it is some place where a local telephone company has not surrendered its contract and taken a permit under the Public Service Commission.

Formerly municipalities had control of transportation in some forms at least. They made contracts with street railways, interurban railways. They had full control of corporations for lighting purposes. Various other things might be mentioned but now these things have been taken over by the state. The Supreme Court has invariably upheld the state's control in all these matters.

The Supreme Court has not overruled the cases in 118 Ind. but still cites them. However, they are generally treated in the case of *Winfield v. Public Service Commission,*[15] where this language is used:

> "There are decisions of this court strongly supporting the right of cities in matters of local self-government. Such decisions do not apply, however, when the interest of the public generally is involved as it is in general telephone service."

In the case just referred to there are statements made that are hard to reconcile, when standing alone, with the powers of the state as well as powers of municipalities. The court declares that streets and highways of a city are a part of other

[15] 187 Ind. 53 at p. 59.

highways and are general highways of the state and as such and to the extent of the interest involved are not purely local to city and incorporated towns. The state may authorize a municipality to grant a franchise to a Public Service Corporation, freed from the exercise of the state power of regulation. Unless this is specifically done, the state is not bound by the contract.

The case referred to holds to the doctrine that a contract between a municipality and a Public Service Corporation, before the Public Service Commission law went into force, is not binding upon the state. The state is not a party to it and it had the power to set this contract aside at least so far as the municipality is concerned. The state had the right to give a permit to the corporation which had entered into this contract and relieve it from the contract it had entered into with the municipality. This completely destroyed the power of a municipality and the contract which it had solemnly entered into so far as any interest it had. This is done by holding that the service being rendered by the Public Service Corporation was no longer a mere local affair but was a state affair. This position has been carried out in a number of cases. It is a narrowing, all the time, of local self-government. It is narrowing the fields in which the cases in the 118 Ind. held that the state could not destroy local self-government. In the case just referred to, the City of Logansport lost its contract, lost entire control of what it had controlled for years.

The case cited, however, seems to not decide the question as to the right of the Public Service Corporation to stand upon the contract made with a municipality. Suppose the corporation should stand upon its contract, refuse to surrender the same, could it still enforce the contract upon the municipality. Could it enforce it as against the state itself? If so, the contract could be enforced by a corporation as against the state as well as against the municipality.

The case of *Central Union Telegraph Co. v. Indianapolis Telephone Co.*,[16] the question again arises where a contract was made by a telephone company giving the company franchise and interest in the City of Indianapolis. The cases are very thoroughly examined again in this case. It was held that a franchise of this kind could be given to the telephone company by the municipality where it had been given that power by the state, but the state could, at any time, take away the power to grant a

[16] 189 Ind. 210.

franchise or the power to continue it and take away from the city all rights concerning the contract it had made, so that dealings from that time on would be entirely between the state and the telephone company. The state could not destroy the contract without the consent of the telephone company.

It was held in that case that the sole power to give or to withhold, consent given to the telephone company to sell its property and business was now vested by the legislature in the Public Service Commission, and that the power theretofore given to the City of Indianapolis was withdrawn by the state and vested in another body of its own creation. The state was, at all times, the principal in the matters covered by the contract; the municipality was at all times only an agent of the State. The principal could at any time dismiss the agent, and take full charge, or appoint a new agent.

Other cases on other matters have been passed upon. Most of the Judges still seek to sustain and uphold the old doctrine that the legislature cannot destroy local self-government, but all go to the point that the legislature can gradually make the field of local self-government more and more narrow.

It is not necessary to go further in the examination of authorities in Indiana upon this subject. Certain things abstractly stated are settled as the law in Indiana. Their application is continually changing.

1. Local self-government applies only to matters which are strictly local. All matters that the general public are interested in belong wholly to the state except as the state delegates the same to a municipality for convenience.

2. That the municipality derives all of its powers from the legislature. The legislature can grant powers and can take them away and where there is any reasonable doubt as to the powers being local or general, decisions must be in favor of the state and not in favor of the municipality.

3. The decision as to whether a statute violates local home rule must be decided from the letter of the constitution and not by history or by things otherwise known to be in existence when the constitution was made. In plain language what is home rule is to be decided solely by the legislature, except where the legislature oversteps the bounds of the letter of the constitution.

4. Municipalities have the control under local self-government of all local matters. The legislature cannot destroy this power without destroying one of the great foundations for our liberty.

There are some points in these matters that seem to have been overlooked. Many of the things now controlled by the state, were originally not within the scope of governmental powers.

1. The procuring and controlling of the water supply for a city or town was originally an individual or a municipal matter: a *business matter,* not governmental. A little incorporated town has a water supply from wells. Nobody has any interest in this water except the inhabitants of this town. Yesterday the Public Service Commission appointed by the governor of the state fixed the rates that should be paid by the inhabitants for the water they use. If this is not a local matter what is? When did it become a governmental, instead of a business matter? Can the legislature make a governmental matter out of what has always been a business matter by a mere declaration in a statute?

2. Water supplies generally in this state, are for a single city or town from local water. A private corporation supplies the citizens who pay for service of getting water coming from their own neighborhood; a strictly business affair, and a local affair. The State appoints a Board to control the business, the people locally have nothing to say as to who shall be on the Board to attend to this local business in which they are vitally interested.

3. "Aside from the restriction of the state and Federal Constitutions and the laws and treaties passed and pursuant thereto, the General Assembly is unlimited in the exercise of legislative powers." But do legislative powers as understood, when the people made the Constitution, include the power for the state to enter into the procuring and controlling of local water supplies? Can the legislature now make governmental, what is now and always has been business or make that which is still local, a state matter?

4. In the matter of the telephone, is not the local use of the telephone entirely separate and apart from "long distance" service? The books concerning the local and toll services are kept separately. The rates for local service are not alike for all cities or towns, and cannot be made universal over the state. The toll service can be and is made on the same basis, for all such service. Is the state doing a local business in controlling and fixing fees for local service? Cannot the same distinction be said of street railways and interurbans?

5. In establishing boards who have charge of what has heretofore been local business, the people have no say as to who such

officers shall be. Is this leaving behind the principal thing that caused the adoption of our present Constitution? Should the people instead of the Governor have this power?

What is the future of municipalities?

There will, in all likelihood always be local matters that may be rightly and successfully managed only by the municipalities, and many matters of general concern that the state will always entrust to them. There have been objections raised to the state entrusting matters to boards, which are not directly answerable to the people.

If in narrowing the rights of municipalities, the General Assembly violates the Constitution, the courts have the right to protect local self-government as in days gone by. If in so narrowing the rights of municipalities, the General Assembly goes too far, but keeps within the constitution, the people may correct the action by choosing a new assembly with a mandate to do so.

Municipal officers are elected by the people. There have been serious objections to the state entrusting matters to Bureaus and Boards who are not selected by the people and not directly answerable to the people. This was the objection to the constitution of 1816 and the outstanding change in the constitution of 1851 was that state officers should be elected by the people instead of being appointed by the General Assembly and the Governor. By amendment to the constitution the members of Boards may be selected by the people.

Whatever the future may bring forth, the love of local self-government will remain. While the people retain their love of liberty, the balance between the state and municipalities, with the state, as the sovereign, the municipality, not an antagonist, but a necessary agent, and a government in purely local matters, will be kept level and safe.